

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 955

Introduced by Senator Beall
(Coauthor: Senator Hancock)

February 4, 2016

An act to amend Sections 1026 and 2968 of the Penal Code, and to add Section 4146 to the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Beall. State hospital commitment: compassionate release.

Existing law requires, when a defendant pleads not guilty by reason of insanity, that a jury determine whether the defendant was sane or insane at the time the offense was committed. Under existing law, if a defendant is found to be not guilty by reason of insanity, the court is required to commit the person to a state hospital, public or private treatment facility, or place him or her on outpatient status, as specified. Existing law requires the Director of State Hospitals to notify the Board of Parole Hearings, and requires the State Department of State Hospitals to discontinue treating a parolee, if the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission. Existing law, subject to exceptions, authorizes the release of a prisoner from state prison if the court finds that the prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 6 months, as determined by a physician employed by the department, and that conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

This bill would establish similar *compassionate* release provisions for a defendant who has been committed to a state hospital because, among other reasons, the defendant is incompetent to stand trial or has a severe mental disorder. The bill would require the Director of State Hospitals to notify the Board of Parole Hearings, and would require the State Department of State Hospitals to discontinue treating a parolee, if the ~~prisoner~~ *patient* meets the criteria established by the bill for release from the state hospital. The bill would make additional conforming changes and would authorize the director to adopt emergency regulations to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1026 of the Penal Code is amended to
2 read:
3 1026. (a) When a defendant pleads not guilty by reason of
4 insanity, and also joins with it another plea or pleas, the defendant
5 shall first be tried as if only those other plea or pleas had been
6 entered, and in that trial the defendant shall be conclusively
7 presumed to have been sane at the time the offense is alleged to
8 have been committed. If the jury finds the defendant guilty, or if
9 the defendant pleads only not guilty by reason of insanity, then
10 the question whether the defendant was sane or insane at the time
11 the offense was committed shall be promptly tried, either before
12 the same jury or before a new jury in the discretion of the court.
13 In that trial, the jury shall return a verdict either that the defendant
14 was sane at the time the offense was committed or was insane at
15 the time the offense was committed. If the verdict or finding is
16 that the defendant was sane at the time the offense was committed,
17 the court shall sentence the defendant as provided by law. If the
18 verdict or finding is that the defendant was insane at the time the
19 offense was committed, the court, unless it appears to the court
20 that the sanity of the defendant has been recovered fully, shall
21 direct that the defendant be committed to the State Department of
22 State Hospitals for the care and treatment of the mentally
23 disordered or any other appropriate public or private treatment
24 facility approved by the community program director, or the court

1 may order the defendant placed on outpatient status pursuant to
2 Title 15 (commencing with Section 1600) of Part 2.

3 (b) Prior to making the order directing that the defendant be
4 committed to the State Department of State Hospitals or other
5 treatment facility or placed on outpatient status, the court shall
6 order the community program director or a designee to evaluate
7 the defendant and to submit to the court within 15 judicial days of
8 the order a written recommendation as to whether the defendant
9 should be placed on outpatient status or committed to the State
10 Department of State Hospitals or other treatment facility. A person
11 shall not be admitted to a state hospital or other treatment facility
12 or placed on outpatient status under this section without having
13 been evaluated by the community program director or a designee.
14 If, however, it appears to the court that the sanity of the defendant
15 has been recovered fully, the defendant shall be remanded to the
16 custody of the sheriff until the issue of sanity has been finally
17 determined in the manner prescribed by law. A defendant
18 committed to a state hospital or other treatment facility or placed
19 on outpatient status pursuant to Title 15 (commencing with Section
20 1600) of Part 2 shall not be released from confinement, parole, or
21 outpatient status unless and until the court that committed the
22 person, after notice and hearing, finds and determines that the
23 person's sanity has been restored, or meets the criteria for release
24 pursuant to Section 4146 of the Welfare and Institutions Code.
25 Nothing in this section prevents the transfer of the patient from
26 one state hospital to any other state hospital by proper authority.
27 Nothing in this section prevents the transfer of the patient to a
28 hospital in another state in the manner provided in Section 4119
29 of the Welfare and Institutions Code.

30 (c) If the defendant is committed or transferred to the State
31 Department of State Hospitals pursuant to this section, the court
32 may, upon receiving the written recommendation of the medical
33 director of the state hospital and the community program director
34 that the defendant be transferred to a public or private treatment
35 facility approved by the community program director, order the
36 defendant transferred to that facility. If the defendant is committed
37 or transferred to a public or private treatment facility approved by
38 the community program director, the court may, upon receiving
39 the written recommendation of the community program director,
40 order the defendant transferred to the State Department of State

1 Hospitals or to another public or private treatment facility approved
2 by the community program director. If either the defendant or the
3 prosecuting attorney chooses to contest either kind of order of
4 transfer, a petition may be filed in the court requesting a hearing,
5 which shall be held if the court determines that sufficient grounds
6 exist. At that hearing, the prosecuting attorney or the defendant
7 may present evidence bearing on the order of transfer. The court
8 shall use the same procedures and standards of proof as used in
9 conducting probation revocation hearings pursuant to Section
10 1203.2.

11 (d) Prior to making an order for transfer under this section, the
12 court shall notify the defendant, the attorney of record for the
13 defendant, the prosecuting attorney, and the community program
14 director or a designee.

15 (e) When the court, after considering the placement
16 recommendation of the community program director required in
17 subdivision (b), orders that the defendant be committed to the State
18 Department of State Hospitals or other public or private treatment
19 facility, the court shall provide copies of the following documents
20 prior to the admission of the defendant to the State Department of
21 State Hospitals or other treatment facility where the defendant is
22 to be committed:

23 (1) The commitment order, including a specification of the
24 charges.

25 (2) A computation or statement setting forth the maximum term
26 of commitment in accordance with Section 1026.5.

27 (3) A computation or statement setting forth the amount of credit
28 for time served, if any, to be deducted from the maximum term of
29 commitment.

30 (4) State summary criminal history information.

31 (5) Any arrest reports prepared by the police department or other
32 law enforcement agency.

33 (6) Any court-ordered psychiatric examination or evaluation
34 reports.

35 (7) The community program director's placement
36 recommendation report.

37 (8) Any medical records.

38 (f) If the defendant is confined in a state hospital or other
39 treatment facility as an inpatient, the medical director of the facility
40 shall, at six-month intervals, submit a report in writing to the court

1 and the community program director of the county of commitment,
2 or a designee, setting forth the status and progress of the defendant.
3 The court shall transmit copies of these reports to the prosecutor
4 and defense counsel.

5 (g) For purposes of this section and Sections 1026.1 to 1026.6,
6 inclusive, “community program director” means the person,
7 agency, or entity designated by the State Department of State
8 Hospitals pursuant to Section 1605 of this code and Section 4360
9 of the Welfare and Institutions Code.

10 SEC. 2. Section 2968 of the Penal Code is amended to read:

11 2968. If the prisoner’s severe mental disorder is put into
12 remission during the parole period, and can be kept in remission,
13 or if the prisoner meets the criteria for release pursuant to Section
14 4146 of the Welfare and Institutions Code, the Director of State
15 Hospitals shall notify the Board of Parole Hearings and the State
16 Department of State Hospitals shall discontinue treating the
17 parolee.

18 SEC. 3. Section 4146 is added to the Welfare and Institutions
19 Code, to read:

20 4146. (a) (1) A physician employed by the department who
21 determines that a patient ~~has six months or less to live~~ *meets the*
22 *criteria set forth in subparagraph (A) or (C) of paragraph (5)* shall
23 notify the medical director and the patient advocate of the
24 prognosis. If the medical director concurs with the diagnosis, he
25 or she shall immediately notify the Director of State Hospitals.
26 Within 72 hours of receiving notification, the director or the
27 director’s designee shall notify the patient of the discharge
28 procedures under this section and obtain the patient’s consent for
29 discharge. The director or director’s designee shall arrange for the
30 patient to designate a family member or other outside agent to be
31 notified as to the patient’s medical condition, prognosis, and release
32 procedures under this section. If the patient is unable to designate
33 a family member or other outside agent, the director or the
34 director’s designee shall contact any emergency contact listed, or
35 the patient advocate if no contact is listed.

36 (2) The director or the director’s designee shall provide the
37 patient and his or her family member, agent, emergency contact,
38 or patient advocate with updated information throughout the release
39 process with regard to the patient’s medical condition and the

1 status of the patient's release proceedings, including the discharge
2 plan.

3 (3) The patient or his or her family member or designee may
4 contact the medical director or director at the state hospital where
5 the patient is located or the Director of State Hospitals to request
6 consideration for a recommendation from the director to the court
7 that the patient's commitment be dismissed *for compassionate*
8 *release* and the patient released from the department facility.

9 (4) Upon receipt of a notification or request pursuant to
10 paragraph (1) or (3), respectively, ~~if the Director of State Hospitals~~
11 ~~determines that a patient satisfies the criteria set forth in paragraph~~
12 ~~(5), the director~~ may recommend to the court that the patient's
13 commitment be dismissed *for compassionate release* and the
14 patient released from the department facility.

15 (5) The court shall have the discretion to dismiss the
16 commitment *for compassionate release* and release the patient if
17 the court finds that the facts described in subparagraphs (A) and
18 (B) or subparagraphs (B) and (C) exist:

19 (A) The patient is terminally ill with an incurable condition
20 caused by an illness or disease that would likely produce death
21 within six months, as determined by a physician employed by the
22 department.

23 (B) The conditions under which the ~~prisoner~~ *patient* would be
24 released or receive treatment do not pose a threat to public safety.

25 (C) The patient is permanently medically incapacitated and
26 requires 24-hour total care, and the medical director responsible
27 for the patient's care and the Director of State Hospitals both certify
28 that the patient is incapable of receiving mental health treatment.

29 (b) Within 10 days of receipt of a recommendation for release
30 by the director, the court shall hold a noticed hearing to consider
31 whether the patient's commitment should be dismissed and the
32 patient released.

33 (c) A recommendation for dismissal submitted to the court shall
34 include at least one medical evaluation, a discharge plan, a
35 postrelease plan for the relocation and treatment of the patient,
36 and the findings listed in paragraph (5) of subdivision (a). The
37 court shall order the medical director to send copies of all medical
38 records reviewed in developing the recommendation to both of
39 the following parties:

1 (1) The district attorney of the county from which the patient
2 was committed.

3 (2) The public defender of the county from which the patient
4 was committed, or the patient's private attorney, if one is available.

5 (d) The matter shall be heard before the same court that
6 originally committed the patient, if possible.

7 (e) If the court approves the recommendation for dismissal and
8 release, the patient's commitment shall be dismissed and the patient
9 shall be released by the department within 72 hours of receipt of
10 the court's order, unless a longer time period is requested by the
11 director and approved by the court.

12 (f) The director or his or her designee shall ensure that upon
13 release, the patient has each of the following in his or her
14 possession, or the possession of the patient's representative:

15 (1) A discharge plan.

16 (2) A discharge medical summary.

17 (3) Medical records.

18 (4) Identification.

19 (5) All necessary medications.

20 (6) Any property belonging to the patient.

21 (g) After discharge, any additional records shall be sent to the
22 patient's forwarding address.

23 (h) The director may adopt regulations to implement this section.
24 The adoption of regulations for the implementation of this section
25 by the department is exempt from the Administrative Procedure
26 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
27 Division 3 of Title 2 of the Government Code).

28 (i) *Nothing in this section shall preclude a patient who is*
29 *released pursuant to this section from being committed to a state*
30 *hospital under the same commitment or another commitment.*